

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Accelerating Wireless Broadband Deployment by	)	WT Docket No. 17-79
Removing Barriers to Infrastructure Investment	)	
	)	
Revising the Historic Preservation Review Process	)	WT Docket No. 15-180
for Wireless Facility Deployments	)	

To: The Commission

**COMMENTS OF MONTE R. LEE AND COMPANY**

Monte R. Lee and Company (“MRL”) files these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking regarding the acceleration of wireless broadband deployment by removing barriers to infrastructure investment. MRL welcomes the opportunity to submit comments on consultation with Native American Tribes. During the planning phase of a proposed tower site, one of the requirements for ensuring compliance with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA) is to consult with federally recognized Indian Tribes to determine if the proposed facilities will affect Indian religious sites.. As part of the efforts to improve government to government consultation, the FCC developed the online Tower Construction Notification System (“TCNS”) to streamline the coordination required with Native American tribes. However, as more tribes have come online, issues in the consultation process regarding Tribal Fees,

Archeological Surveys, and Tribal Documentation are the cause of prohibitive construction costs and delays for smaller service providers in rural areas.

## **Tribal Fees**

### **Issue**

As more tribes became part of the TCNS, there has been a significant increase in the number of tribes requesting information and inclusion in the consultation process for individual proposed site locations. From a historical perspective, this number is expected due to migration and relocation of tribes. However, the average number of tribes interested in a proposed site locations, has tripled in the last five years.

Additionally, the increase in TCNS participation has raised the aggregated demand for consulting fees. Currently, a proposed site in the Great Plains region will receive requests for fees by an average of 15 tribes. This demand is a sharp increase from the average of five tribes requiring consulting charges for a proposed site just five years ago.

Also, costs vary widely among tribes, and typically, we are experiencing a range between \$50 and \$1,500 each. This increase in the average fee per tribe per site is as much as \$565 over the past five years. This has resulted in an aggregated effect of increasing the total tribal consultation charges for a proposed site from \$900 to \$8,500 over the previous five years. While larger members of the telecommunications industry might be able to absorb such steep costs, this negatively affects smaller telecommunications carriers in rural areas the most. The result is that rural populations and regions remain unserved or underserved. Without paying the fees, the rural service provider is powerless to complete the NEPA checklist. If the rural service provider refuses to pay the fees, the tribes often refuse to comment until advance payment is received.

## Recommendations

1. ***Require Tribal Documentation of Cultural Resources:*** As part of TCNS, the tribes can now submit counties where they have a historic or cultural interest in an area (related to their native lands). In addition to this, the TCNS could add a mechanism to require tribes to explain *why* they have an interest in these areas, thus eliminating claims to areas where they have little to no evidence of a historic/cultural link.
2. ***The FCC Establishes a Fixed Consultation Fee per Site:*** When the applicant uploads site information to the TCNS, they would pay a consultation fee . The FCC will distribute the consultation fee proportionately among the tribes that express an interest in the site.
3. ***Cap Tribal Consultation Fees:*** Although fees are necessary for tribes to recover labor and resource costs, a cap on tribal consultation fees could be negotiated between the FCC and the tribes to alleviate the exorbitant costs of meeting NEPA compliance requirements for individual tower sites.

## Archeological Surveys

### Issue

In compliance with Section 106 of the National Historic Preservation Act (NHPA), a State Historic Preservation Office (SHPO) will occasionally require an on-site cultural resources survey (archeological investigation) of a proposed tower site. This requirement is typically due to its proximity to a historic property listed on the National Register of Historic Places. Many SHPOs and tribes will rely on existing records to determine if these surveys are needed. However, some SHPOs and tribes make a default requirement of an on-site investigation. This requirement adds an unnecessary cost of \$1,000 to \$4,000 to a proposed site. Some tribes have their own survey method guidelines and do not necessarily follow the

federal archeological guidelines. Therefore, nearly every proposed new tower site will undergo an archeological survey with a myriad of different guidelines to follow, whether an on-site investigation is needed or not.

## **Recommendation**

***Streamline Required Cultural Resource Documentation:*** New and Twilight tower sites in rural areas are still subject to the higher levels of research, investigation, and documentation. The FCC could work more closely with the tribes (and some SHPOs) to streamline required cultural resources documentation without jeopardizing the overall goal of historic and cultural preservation.

## **Tribal Documentation**

### **Issue**

The requested documentation from tribes is as varied and widespread as the tribes themselves. Some will request the FCCs formal 620/621 documentation format and some have issued their own guidelines on what should be submitted and in what format. If only a few tribes requested information, this would not be problematic. However, when 15 or more tribes respond and all request a different format of documentation, as well as how it is to be submitted (email, dropboxes, hard copies faxed or mailed, etc.), the preparer's time/costs can become exorbitant.

### **Recommendation**

***Streamline Required Cultural Resource Documentation:*** The FCC could work more closely with the tribes to streamline documentation requirements. This could include a mechanism in TCNS where the required documentation could be uploaded.

## **Additional Discussion**

As a funding agency, the Rural Utilities Service (USDA) administers loan programs for telecommunication providers serving less densely populated rural areas. Projects submitted for the financing through these programs are also subject to NEPA compliance. These projects traditionally consisted of wireline infrastructure placement, maintenance, and upgrades. With the advancement of wireless services, many rural providers have incorporated wireless facilities into their networks and service offerings. When reviewing proposed projects with wireless installations, RUS defers the NEPA portion to the FCC as the first regulating entity, and thus, the lead agency in ensuring environmental compliance.

Traditional RUS wireline projects (or parts of the projects with wireline facilities) must also undergo consultations with tribes. However, the wireline portion is not subject to tribal consultation fees. For RUS wireless projects, we propose that it is reasonable that the FCC also exempt proposed tower site reviews from tribal consultation fees, particularly in cases where they will be in public ROWs, urban areas, and on federally-managed lands.

Respectfully Submitted,

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